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REMARKS

Claims 6-11 have been canceled without prejudice or disclaimer. New claims 12-17 have been added. Basis for new claims 12, 15, and 17 can be found, for example, in paragraphs 20-23, 26 and 27. No new matter has been added. Entry of said amendment and reconsideration is respectfully requested.

The rejection of claims 6-11, as it now pertains to new claims 12-17, under 35 USC 102(b) as being anticipated by U.S. Patent No. 2,254,948 to Kubalek or U.S. Patent No. 4,908,977 to Foster is respectfully traversed. The Office states that Kubalek and Foster disclose a device/method for providing uniform emission of a flying insect attractant comprising a container-at 14, 16 of Kubalek and at 1,3 of Foster, comprising a top surface, a bottom surface, and side walls noting figures 1-2 of Kubalek and Foster, having a composition having at least one liquid attractant for attracting flying insects-referring to example page 1, column 2, lines 26-33 of Kubalek and column 2, lines 1-68 of Foster, a wick at 11 of Kubalek and at 4 of Foster and -at 4 of Foster, and a first opening at

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18.31. or 38 and -at the open top end of the container-at 1 of Foster, a wick- at 11,29, or 37 of Kubalek and at 4 of Foster,, inserted into the container wherein the length of the wick is frictionally adjustable to provide a uniform emission rate of the at least one attractant which results in maximum attraction of a flying insect-citing Figures 1-5 of Kubalek and Figures 1-2 of Foster, and a second opening citing 19-20, or the other 31 or any other of 38 of Kubalek and at any opening in item 5 of Foster, in the top of the container than the first opening and large enough to prevent film closure by a liquid, wherein the second opening allows air to enter the device to create air pressure which allows steady flow of liquid attractant to be absorbed into the wick citing figures 1-5 of Kubalek and figures 1-2 of Foster, at least one volatile insecticide in the container and is absorbed by the wick citing page 1, column 2, lines 22-25 of Kubalek and column 2, lines 1-68 of Foster and hanging the at least one trap in a location suspected of being infested by at least one of a targeted pest flying insect citing 21 or 38 or 39 in figures 1-5 of Kubalek and claim 20 in column 8 of Foster, wherein the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick citing the example on page 1, column 2, lines 22-25 of Kubalek and columns 2-4 of Foster.

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Applicant respectfully submits that Kubalek and Foster both fail to anticipate the instantly claimed invention. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the reference discloses all the claimed elements in isolation. Neither reference teaches a device, a trap containing a device, or a method of mass trapping comprising a device **consisting** of a container having a top surface, a bottom surface, and side walls, having a composition of at least one insect specific volatile liquid attractant for targeting at least one flying insect species, and a first opening in the top of said container to frictionally receive a wick; a wick inserted into said first opening of said container wherein the length of said wick is frictionally adjustable to provide an emission rate of said at least one attractant which results in maximum attraction of said targeted flying insect over an extended period of time of at least about two months, and a second opening in the top of said container, smaller than said first opening and large enough to prevent film closure by a liquid, wherein said second opening allows air to enter into said container to create air pressure which allows a steady flow of said attractant into said wick. The references further fail to disclose the composition further

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including at least one volatile insecticide. Furthermore, Kubalek and Foster fail to teach a trap or a method for mass trapping that includes a trap and the device of the instantly claimed invention of claims 15-17. They only teach a killing device where the insects are instantly killed and fall where they may. These references fail to anticipate claims 15-17.

Kubalek discloses a device that includes sugar or molasses as an insect attractant. Sugar or molasses are not volatile insect-specific attractants. The Kubalek patent specifically states on column 2, lines 34-36 that only water evaporates. The reference fails to disclose a volatile liquid attractant for targeting at least on flying insect species. If the Office is interpreting water as a volatile insect attractant, it is not an insect-specific attractant that would target a specific insect species. It would attract any insect whether flying or crawling. Furthermore, Kubalek fails to teach a frictionally adjustable wick to provide a uniform emission rate of said at least one attractant which results in maximum attraction of said flying insect over a period of at least two months and up to 6 months without replenishing the liquid attractant. The device of Kubalek is for killing insects that come in direct contact with the wick. The attractant, sugar or molasses, remains in solution. The sugar or molasses encourage the insect to ingest enough of the liquid containing the toxicant to kill the insect.

The wick only needs to be exposed at the surface of the device in order for the flying insect to come in contact. There is no teaching in the patent that the wick is adjusted to provide a maximum uniform emission rate of said at least one attractant which is a volatile attractant which results in maximum attraction of said flying insect over an extended period of at least about two months. The patent is totally silent as to this element of the instantly claimed invention. From the disclosure and the figures it appears that the wick is flush with the top of the device. With respect to claim 8, Kubalek fails to teach a first and second opening which form a single opening with the first opening being of a size to frictionally hold a wick and said second opening is elongated and narrower than said first opening. Kubalek clearly fails to anticipate the presently claimed invention. Withdrawal of the instant rejection based on Kubalek is respectfully requested.

Foster discloses a device that includes a target area that is sloped sufficiently downward so that the intoxicated flies roll off to provide continuous access to the target area by newly arriving flies. Furthermore, the target area may extend into the liquid and the target area may be fitted with a closely fitting or flush grill 5 (Figure 2) to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitably limited to a size which accomplishes this function.

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The device requires direct contact of the insect and includes a **nonvolatile** compound which is the insecticide. This is outside the scope of claims 7 and 10. The device does not include an adjustable wick to provide uniform emission of a volatile attractant to result in maximum attraction of a flying insect since the wicking material is the target area and there is nothing in the patent which teaches one of ordinary skill in the art to adjust the target area in order to increase the attraction of the insects to the volatile attractant. In fact, the patent teaches at column 5, lines 3-11 that the device will be useful for killing even if all the fluid or moisture is allowed to evaporate since the toxicant readily dissolves in the insect saliva. This teaches away from the instantly claimed invention which requires a volatile liquid attractant and a volatile liquid toxicant. The Office states that item 5 is an opening in the container that allows air to flow into the container and for refilling the container with a liquid. This is not the case. Item 5 is a flush grill to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitably limited to a size which accomplishes this function. See column 3, lines 34-50. Column 4, lines 28-40 describe how the reservoir is filled stating that a resealable inlet or portal may be provided for in a side or sides of the base section. These features are outside the scope of the presently claimed

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invention. Foster fails to teach a device or a method consisting of a device having a container with a frictionally adjustable wick to provide a uniform emission rate of said at least one volatile liquid attractant for targeting at least one flying insect which results in maximum attraction of said flying insect.

Foster fails to anticipate the presently claimed invention.

Neither reference anticipates the claimed invention.

Applicant respectfully requests withdrawal of the instant rejection.

The rejection of claim 8, as it now pertains to new claim 14, as being anticipated by Foster is respectfully traversed. The Office states that Foster discloses the first and second opening form a single opening citing Figures 1 and 2 with the first opening at the top of the container -1 being of a size to frictionally hold a wick at 4 and the second opening in item 5 is elongated and narrower than the first opening citing figures 1-2.

This rejection is wholly unclear since item 1 is the hollow base section and the top opening is not open, The wicking material is the target area which is sloped downward so that intoxicated flies fall off of it. Item 5 is a grill that covers the target area and is optional and has multiple openings so that flies can land on the target area, ingest the nonvolatile toxicant but prevent accidental contact by humans and animals. Furthermore, the openings in 5 would not prevent film closure by the liquid in

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the reservoir or maintain air pressure in the device as required by the instantly claimed invention. Furthermore, as stated above, Foster discloses a device that includes a target area that should be sloped sufficiently downward so that the intoxicated flies roll off to provide continuous access to the target area by newly arriving flies. Furthermore, the target area may extend into the liquid and the target area may be fitted with a closely fitting or flush grill 5 (Figure 2) to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitably limited to a size which accomplishes this function. The device requires direct contact of the insect and includes a **nonvolatile** compound which is the insecticide. This is outside the scope of claims 7 and 10. The device does not include an adjustable wick to provide uniform emission of a volatile attractant to result in maximum attraction of a targeted flying insect species since the wicking material is the target area and there is nothing in the patent which teaches one of ordinary skill in the art to adjust the target area in order to increase the attraction of the insects to the volatile attractant. In fact, the patent teaches at column 5, lines 3-11 that the device will be useful for killing even if all the fluid or moisture is allowed to evaporate since the toxicant readily dissolves in the insect saliva. This teaches away from the instantly claimed invention which requires a volatile liquid

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attractant and a volatile liquid toxicant. The Office states that item 5 is an opening in the container that allows air to flow into the container and for refilling the container with a liquid. This is not the case. Item 5 is a flush grill to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitably limited to a size which accomplishes this function-See column 3, lines 34-50. Column 4, lines 28-40 describe how the reservoir is filled stating that a resealable inlet or portal may be provided for in a side or sides of the base section. These features are outside the scope of the presently claimed invention. Foster fails to teach a device or a method consisting of a device having a container with a frictionally adjustable wick to provide a uniform emission rate of said at least one volatile liquid attractant for targeting at least one flying insect which results in maximum attraction of said flying insect.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the reference discloses all the claimed elements in isolation.

The Foster reference fails to anticipate the presently claimed invention. Applicants respectfully request withdrawal of the instant rejection.

The rejection of claim 8, as it now pertains to new claim

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14, under 35 USC 103(a) as being unpatentable over Kubalek as applied above to claim 6 and further in view of Foster is respectfully traversed.

The Office states that Kubalek does not disclose the first and second opening form a single opening with the first being of a size to frictionally hold a wick and second opening is elongated and narrower than the first opening. The Office then states that Foster does disclose the first and second opening form a single opening citing figures 1-2 with the first opening at the top of the container 1, being of a size to frictionally hold a wick and the second opening in item 5 which is elongated and narrower than the first opening citing figures 1-2. The Office concludes it would have been obvious to one of ordinary skill in the art at the to take the device of Kubalek and add the first and second openings of Foster to allow for the device to be easier to clean and maintain.

Applicants respectfully submit that the combination of Kubalek and Foster fails to render the instantly claimed invention *prima facie* obvious. As stated above in the 102 (b) rejections, and herein incorporate by reference in its entirety, Kubalek fails to teach (1) at least one volatile liquid attractant for targeting at least one flying insect species (Claims 12-17 of the present invention), (2) a volatile liquid insecticide (claims 13 and and 15 of the presert invention), (3)

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fails to teach a trap that includes the device and a method for trapping insects (claim 15-17 of the present invention). Further more, (4) Kubalek fails to teach an adjustable wick which provides maximum uniform emission rate of said at least one volatile liquid attractant which results in maximum attraction of said targeted flying insect over an extend period of at least about two months (Claims 12-17 of the present invention) and and (5) a device which emits at least one volatile attractant for at least about six months without replenishment of said attractant (Claims 12-17). Kubalek taken in view of Foster fails to cure these deficiency since Foster, as discussed above and incorporated by reference for the sake of brevity, fails to teach (2) a volatile liquid insecticide (claims 13 and and 15 of the present invention), (3) fails to teach a trap that includes the device and a method for trapping insects (claim 15-17 of the present invention), and (4) an adjustable wick which provides maximum uniform emission rate of said at least one volatile liquid attractant which results in maximum attraction of said targeted flying insect over an extend period of at least about two months (Claims 12-17 of the present invention) and (5) a device which emits at least one volatile attractant for at least about six months without replenishment of said attractant (Claims 12-17). Foster teaches that item 1 is the hollow base section and the top opening is not open. The wicking material is the

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target area which is sloped downward so that intoxicated flies fall off of the targeted area. Item 5 is a grill that covers the target area and is optional and has multiple opening so that flies can land on the target area, ingest the nonvolatile toxicant but prevent accidental contact by humans and animals. Furthermore, the openings in 5 would not prevent film closure by the liquid in the reservoir or maintain air pressure in the reservoir. The wick is the target area in the device of Foster and the Patent provides no teaching to one of ordinary skill in the art how to adjust the target area to increase or decrease the exposed area to obtain maximum attraction of the targeted flying insect to the volatile attractant. In fact, the patent teaches at column 5, lines 3-11 that the device would be useful for killing even if all the fluid or moisture is allowed to evaporate since the toxicant readily dissolves in the insect saliva. This teaches away from the instantly claimed invention which requires a volatile liquid attractant. The Office states that item 5 is an opening in the container that allows air to flow into the container and for refilling the container with a liquid. This is not the case. Item 5 is a flush grill to prevent accidental contact of the target area by humans and domestic pets and the grill openings are suitably limited to a size which accomplishes this function-See column 3, lines 34-50, column 4, lines 28-40 which describe how the reservoir is filled stating that a

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resealable inlet or portal may be provided for in a side or sides of the base section.

There would be no motivation to one of ordinary skill in the art to combine Kubalek in view of Foster since the combination teaches the use of static wicks, both reference are totally silent on an adjustable wick, the use of non-volatile insecticides, and neither device in the two references include a trap or are an insect trap. They both fail to teach a method for trapping at least one targeted insect species. There is simply no motivation save for the teachings of the inventor's application to produce the claimed invention. The Office is using the improper standard of **IMPROPER** hindsight analysis. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered *prima facie* obvious.

The Office is also using the improper standard of obvious to try. It is respectfully submitted that the essence of obviousness does not arise by merely picking and choosing from the prior art to produce the claimed invention. "In order to establish *prima facie* obviousness, it is necessary for the Examiner to present evidence preferably in the form of some teaching, suggestion, incentive, or general available knowledge, that one of ordinary skill in the art would have been led to

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combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. Ex parte Levengood, 28 USPQ2d 1300, 130, (Bd. Pat. & Int'f, 1993).

Starting from this correct standard of obviousness, the error of the Office is clear-it is improper because the Office has failed to identify teachings in the prior art motivating the skilled artisan to produce the device of the presently claimed invention.

No references or combination of references have been provided which would teach, suggest, or motivate one of ordinary skill in the art to modify the Kubalek patent by providing an adjustable wick, a volatile liquid insecticide, a trap nor have any references been provided to teach to modify Kubalek in a way to allow maximum insect attraction for at least two months and to emit a volatile liquid attractant for at least about six months without replenishment of said attractant. There is simply no motivation save for the teachings of applicants application to produce the claimed invention.

The rejection is improper. Applicants respectfully request withdrawal of the instant rejection.

In view of the above remarks, it is believed that all of the claims are in condition for allowance. Accordingly, it is respectfully requested that the instant application be allowed to issue. If any issues remain to be resolved, the Examiner is invited to telephone the undersigned at the number below.

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In the event this paper is deemed not timely filed, the undersigned hereby petitions for an appropriate extension of time. Please charge any fees which may be required by this paper or at any time during prosecution of the instant application, or credit any overpayment, to deposit account 50-2134.

Respectfully Submitted,

May 10, 2005
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CERTIFICATE OF FILING VIA FACSIMILE

The undersigned hereby certifies that the attached **AMENDMENT UNDER 37 CFR 1.116 and NOTICE OF APPEAL**, were this day, May 10 31, 2005, filed in the United States Patent and Trademark Office via facsimile to facsimile number 571-273-8300. Total Pages: 24

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